

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 8, 2023 at 1:30 p.m.

1. <u>18-25851-E-13</u> <u>22-2087</u> CAE-1	ROBERT HUNTER Peter Macaluso	CONTINUED STATUS CONFERENCE RE: COMPLAINT 9-1-22 [<u>1</u>]
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HUNTER V. FILLMORE GROUP TRUST

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Unknown

Adv. Filed: 9/1/22
Summons Reissued: 9/15/22 [Dckt 6]
Answer: none

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 5/10/23 to afford Plaintiff-Debtor the opportunity to prosecute this Adversary Proceeding to judgment.

Request for Entry of Default by Plaintiff [re Fillmore Group Trust, et al.] filed 6/2/23 [Dckt 28]; Entry of Default and Order re: Default Judgment Procedures filed 6/5/23 [Dckt 29]

[PGM-2] Motion for Entry of Default Judgment for Quite Title and for Attorney's Fees and Costs filed 7/3/23 [Dckt 32]; set for hearing 8/24/23 at 11:00 a.m.

The Status Conference is ~~continued to 11:00 a.m. on August 24, 2023~~
(~~Specialy Set Day and Time~~) to be conducted in conjunction with the hearing on
the Motion for Entry of Default Judgment.

AUGUST 8, 2023 STATUS CONFERENCE

Robert P. Hunter, the Plaintiff-Debtor, has filed a Motion for Entry of a Default Judgment. The only evidence presented in support of the Motion is the Declaration of Plaintiff-Debtor's counsel in support of recovering legal fees. No evidence is presented in support for the entry of the judgment.

As Judge Christopher M. Klein has long stated, while a judge may assume and find that allegations in a complaint are true and admitted in the absence of an answer being filed, the judge is not required to. As the court requires of creditors went seeking entry of default judgments against least sophisticated debtor, Plaintiff-Debtor must provide competent, admissible evidence in support of the relief requested. While such evidence may be easy to present to the court, such evidence must be filed in support of the Motion for Entry of Default Judgment. ^{Fn.1.}

FN. 1. See Federal Rule of Civil Procedure 55, which is incorporated into Federal Rule of Bankruptcy Procedure 7055, which provides in pertinent part:

(b) Entering a Default Judgment.

...

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. . . The court may conduct hearings . . .—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) **establish the truth of any allegation by evidence**; or

(D) investigate any other matter.

At the August 8, 2023 Status Conference, Counsel for Plaintiff-Debtor reported **XXXXXXX**

MAY 10, 2023 STATUS CONFERENCE

On May 4, 2023, Plaintiff-Debtor filed an updated Status Report. Dckt. 24. Plaintiff-Debtor reports that no answer has been filed to the Complaint and Defendant has not communicated with Plaintiff-Debtor's counsel. Additionally, no answer having been filed, Plaintiff-Debtor requests a sixty (60) day continuance so he may prosecute the entry of a default judgment.

Plaintiff-Debtor's Certificate of Service by Publication, U.S. Mail, and electronic was filed on February 21, 2023. Dckt. 18. The service made is stated to have been made as follows:

1. Pursuant to Court Order (Doc 15), service by Publication has been ordered in The Daily Recorder in Sacramento, California, and the publication dates

are 2/23/23, 3/2/23, 3/9/23, and 3/16/23. The Proof of Publication will be mailed to Plaintiff's counsel's office after the last date of publication (see attachment A);

2. Pursuant to Court Order (Doc 15), service by U.S. Mail, First Class, postage prepaid, has been made to the address stated on the Deed of Trust: 12021 Gold Pointe Lane, Gold River, CA 95670;
3. Pursuant to Court Order (Doc 15), service has been made via email to the <LienServices@hotmail.com> email address.

Cert. of Serv.; Dckt 18 at 6.

At the Status Conference, counsel reported that Plaintiff-Debtor would promptly be filing a request for entry of default and then a motion for entry of default judgment.

The court continues the Status Conference to afford Plaintiff-Debtor the opportunity to prosecute this Adversary Proceeding to judgment.

FEBRUARY 22, 2023 STATUS CONFERENCE

On January 5, 2023, the court entered an order authorizing that service may be made by publication. Dckt. 16.

No updated Status Report has been filed by Plaintiff-Debtor.

At the Status Conference, Plaintiff-Debtor reported that service by Publication has been made.

Plaintiff-Debtor requested the Status Conference be continued so that the response period could end and Plaintiff-Debtor proceed with a motion for entry of default judgment if no responses are filed.

NOVEMBER 30, 2022 STATUS CONFERENCE

The Plaintiff-Debtor has commenced this Adversary Proceeding to quiet title with respect to a deed of trust naming Fillmore Group Trust, et al., as the beneficiary. Plaintiff-Debtor alleges that he has not authorized the deed of trust, is the victim of identity theft, and the deed of trust is void.

On September 15, 2022, a Reissued Summons was issued for Plaintiff. Dckt. 6. No certificate of service has been filed.

At the Status Conference, counsel for Plaintiff-Debtor addressed how they will proceed in trying to identify the Defendant (the entity named in the Deed of Trust) and complete service (including service by publication).

Counsel for the Plaintiff-Debtor further reported that the title company listed as Trustee on the Deed of Trust states that it has no record of this Deed of Trust and is not the trustee thereunder.

Based on the identify theft alleged, the named Defendant not being readily identifiable, and a possible need for service by publication, the court extends the deadline for service of the summons and complaint as provided in Federal Rule of Civil Procedure 4(m) and incorporated into Federal Rule of Bankruptcy Procedure 7004(a), to and including February 23, 2023, which deadline may be extended by further order of the court.

In reviewing the copies of the Deed of Trust alleged to have been forged, the court observes that the named beneficiary, Fillmore Group Trust, is stated to have an address of 12021 Gold Pointe Lane, Gold River, California, which is the same address as the Debtor's residence. Additionally, the co-trustee of the Fillmore Group Trust is stated to be the Debtor, who lives at the Gold Pointe Lane Property.

The Deed of Trust states that the borrower is not the Debtor, the Trustor under the Deed of Trust. However, no borrower or specific obligation is identified in the Deed of Trust

2. <u>18-25851-E-13</u> <u>22-2088</u> CAE-1	ROBERT HUNTER Peter Macaluso	CONTINUED STATUS CONFERENCE RE: COMPLAINT 9-1-22 [1]
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**HUNTER V. PEACHTREE GROUP
TRUST**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Unknown

Adv. Filed: 9/1/22
Summons Reissued: 9/15/22 [Dckt 6]
Answer: none
Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 5/10/23 to afford Plaintiff-Debtor the opportunity to prosecute this Adversary Proceeding to judgment.

Request for Entry of Default by Plaintiff [re Peachtree Group Trust, et al.] filed 6/2/23 [Dckt 29]; Entry of Default and Order re: Default Judgment Procedures filed 6/5/23 [Dckt 30]

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On May 4, 2023, Plaintiff-Debtor filed an updated Status Report. Dckt. 25. Plaintiff-Debtor reports that no answer has been filed to the Complaint and Defendant has not communicated with Plaintiff-Debtor's counsel. Additionally, no answer having been filed, Plaintiff-Debtor requests a sixty (60) day continuance so he may prosecute the entry of a default judgment.

Plaintiff-Debtor's Certificate of Service by Publication, U.S. Mail, and electronic was filed on February 21, 2023. Dckt. 19. The service made is stated to have been made as follows:

1. Pursuant to Court Order (Doc 16), service by Publication has been ordered in The Daily Recorder in Sacramento, California, and the publication dates are 2/23/23, 3/2/23, 3/9/23, and 3/16/23. The Proof of Publication will be

mailed to Plaintiff's counsel's office after the last date of publication (see attachment A);

2. Pursuant to Court Order (Doc 16), service by U.S. Mail, First Class, postage prepaid, has been made to the address stated on the Deed of Trust: 12021 Gold Pointe Lane, Gold River, CA 95670;
3. Pursuant to Court Order (Doc 16), service has been made via email to the <LienServices@hotmail.com> email address.

Cert. of Serv.; Dckt 19 at 6.

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In reviewing the copies of the Deed of Trust alleged to have been forged, the court observes that the named beneficiary, Peachtree Group Trust, is stated to have an address of 12021 Gold Pointe Lane, Gold River, California, which is the same address as the Debtor's residence. Additionally, the co-trustee of the Peachtree Group Trust is stated to be the Debtor, who lives at the Gold Pointe Lane Property.

3. [19-26957-E-13](#) **MARK HAYNES** **CONTINUED MOTION TO DISMISS**
[DPC-4](#) **Mark Shmorgon** **CASE**
3-27-23 [[139](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 28, 2023. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXXXXX

AUGUST 8, 2023 CONTINUED HEARING

At the continued Hearing, XXXXXX

REVIEW OF MOTION AND PRIOR PROCEEDINGS

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Mark Haynes ("Debtor"), is delinquent in Plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on April 20, 2023. Dckt. 145. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$7,636.00 delinquent in plan payments, which represents multiple months of the \$1,909.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

May 10, 2023 Hearing

At the hearing, counsel for the Debtor stated that the Debtor, who is a real estate agent, has four deals that are to close this month. Debtor at the hearing stating that he is ready to cure the default this week.

In light of the payment sources and Debtor's representation that he will have the defaults promptly cured, the Trustee concurred with the request for a continuance.

June 21, 2023 Hearing

As of the court's June 16, 2023 review of the Docket, nothing further has been filed by the Debtor.

At the hearing, counsel for the Trustee reported that Debtor's delinquency is in excess of \$7,000.00, but payments are scheduled in June, which if paid, the delinquency will be substantially reduced.

The payments are in process and the Trustee agreed to a continuance.

July 19, 2023 Hearing

At the hearing, counsel for Debtor reported that he is still one payment in default, but is attempting to get the payment made the same day as hearing on the Motion. The Trustee concurred with the request for a short continuance.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxxxxxx**

Debtor's Atty: Daniel L. Egan

Notes:

Operating Reports filed: 7/13/23

[WF-1] Application to Employ Wilke Fleury LLP as Debtors' Counsel filed 6/12/23 [Dckt 6]; Order granting filed 6/30/23 [Dckt 32]

[WF-2] Debtors' Motion for Authority to Use Cash Collateral filed 6/15/23 [Dckt 13]; Order granting filed 6/30/23 [Dckt 33]

[WF-3] Debtors' Motion for Interim and Final Authority in Incur Unsecured PostPetition Borrowing filed 6/15/23 [Dckt 18]; Order granting filed 6/30/23 [Dckt 34]

[WF-4] Debtors' Objection to Claims of California Franchise Tax Board filed 6/20/23 [Dckt 23]; set for hearing 8/24/23 at 10:30 a.m.

Trustee Report at 341 Meeting lodged 7/10/23

Trustee Report at 341 Meeting lodged 7/19/223

The Status Conference is xxxxxxx
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AUGUST 8, 2023 STATUS CONFERENCE

Jakob and Gladys, the two debtors who are now also the Debtor in Possession, filed a Status Report on July 31, 2023. Dckt. 51. The business of the Debtor are dairy and farming operations. The real property on which the dairy and farming operations occur were transferred into an Irrevocable Trust, for which the two debtors and their children are beneficiaries, in 2016 (corrected deeds recorded for deeds recorded in 2015).

The dairy operations are conducted by a limited partnership identified as Dairy LP. 99% interest in Dairy LP is owned by the irrevocable trust.

To build a "state of the art dairy facility" in 2016/2017, financing was obtained from the Bank of the West. The financing was obtained by Dairy LP, with personal guaranties given by the two debtors and the Irrevocable Trust.

The Status Reports recounts a series of financial setbacks for Dairy LP due to the default in payments made by purchasers of dairy products from Dairy LP. The obligation owed to Bank of the West were in default by May 2020.

Portions of the property were sold to make payments to Bank of the West and other lien creditors in 2020 and 2021. Bank of the West was paid more than \$27,000,000 on the financing it provided.

The two debtors, and now the Bankruptcy Estate, seek to continue their farming operations on the property leased from the Irrevocable Trust.

The assets as of the commencement of this case included a modest amount of cash, crops of approximately \$250,000, and Debtor's interests in the Irrevocable Trust.

For creditors, there is a substantial federal and state tax claim arising from the sale of the real properties.

The Debtor in Possession provides an analysis of why the two debtors qualify for relief under Chapter 12. The Declaration of Debtor in Possession Jakob Weststeyn is provide in support of the Status Report. Dec.; Dckt. 52.

Debtor in Possession reports that the Chapter 12 Plan will be filed by mid-August 2023 and that the confirmation hearing will be set for late September 2023.